Editor's note: Appealed -- dismissed, Civ. No. 75-0905 (D.D.C. Aug. 8, 1975)

DUNCAN MILLER

IBLA 75-387 Decided April 16, 1975

Appeal from Wyoming State Office, Bureau of Land Management, decision rejecting oil and gas lease offer W-49360.

Dismissed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

   A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer was formerly included in a terminated oil and gas lease, and which may be leased only in compliance with the simultaneous filing procedures set out in 43 CFR 3112.

2. Rules of Practice: Appeals: Statement of Reasons

   A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Duncan Miller appeals from a decision by the Wyoming State Office, Bureau of Land Management, dated January 29, 1975, rejecting oil and gas lease offer W-49360. The circumstances are set forth below.

Miller held noncompetitive oil and gas lease W 0312159, which was due to expire on December 31, 1974, at the termination

of its 10-year primary term. Even though no operations had been undertaken on the leased land during the lease term, Miller, on December 27, 1974, four days before the lease expired, "protested," asserting that the Government had breached the lease contract when it required him to make additional expenditures by reason of stipulated requirements for environmental protection. It is of interest to note that the case record of lease W 0312159 is singularly devoid of additional stipulations for protection of the environment beyond those set out in the basic lease terms. In an identical situation this Board held that a lessee's protest against the termination of an oil and gas lease is properly denied when the lessee fails to prove his charges that there was a breach of the terminated lease or unlawful activity with respect thereto. Duncan Miller, 15 IBLA 275 (1974).

In apparent anticipation of a similar decision from the Board in this case, Miller filed the subject lease offer, on January 17, 1975. It bears this notation: "Based on rights implicit that have been derogated in prior lease # W-0312159." His appeal taken from the rejection of the offer is no more enlightening. In pertinent part, the appeal reads:

> In connection with the "Instant Appeal" and "Lease Offer", the appellant is merely pursuing his lawful rights for a new lease, for the reasons stated in the appeal (or appeals) for the old lease. The government promised appellant a lease with certain provisions, as noted, pursuant to the Mineral Leasing Act of 1920, and provisions, as on the lease itself. But administrative officers, acting unlawfully, have denied him the full enjoyment of that lease; consequently, the United States government is honor-bound to uphold the lease contract, as it was.

The obscureness of Miller's appeals is legend. It is as true now as it was in 1966, when, in considering Duncan Miller, 73 I.D. 211, the Assistant Solicitor, speaking for the Secretary, said:

> Miller has filed voluminous appeals over the past several years. His appeals are not noted for their clarity or for their orthodoxy, and this one is no exception.

73 I.D. at 215. And again in Duncan Miller, A-31081 (May 15, 1969), when it was noted that:

> This office has had previous occasion to criticize Miller for the "discursive, incoherent documents

> replete with irrelevances" filed by him as appeals. Duncan Miller, A-31005 (March 4, 1969). The appeal just quoted is not a model of clarity * * *

While in this "appeal" he asserts that unlawful acts of administrative officers have deprived him of rights, he adheres to obfuscatory and fatuous presentations in which he neither identifies the violator nor specifies the law or regulation which has been violated. As the Department said in Duncan Miller, A-30364 (May 12, 1965):

> Miller's present appeal is no more illuminating that his previous efforts were. He neither identifies the violator of any law or regulation nor does he specify the law or regulation that has been violated. Moreover, he does not establish any relationship between the charge of fraudulent lease offerors and his request that no lease be issued to any offeror receiving a higher priority than his.

Yet again, in Duncan Miller, 7 IBLA 169 (1972), this Board characterized the presentation as follows:

This appeal is clearly specious and totally undeserving of the attention which must necessarily be accorded it.

> We fail to discern any plausible reason why appellant continues this disingenuous practice. The regulations require reasonable environmental safeguards; the cost thereof must be borne by the lessee. Miller should realize by now that this answer is foreordained. His continued pursuit of appeals for causes without merit compels the conclusion that his actions are designed solely to harass BLM personnel and to hamper the orderly procedures of this Department.

[1] Miller is experienced in federal oil and gas leasing. He knows, or should know beyond peradventure, that lands covered by oil and gas leases which expire by operation of law are subject to the filing of new lease offers only in accordance with the regulations in 43 CFR Subpart 3112, and that his offer, W-49360, must be rejected for that reason alone.

No evidence has been presented which in any way corroborates the assertions by Miller in his appeal. It is buttressed solely by scatter-shot allegations of unlawful or improper acts by Departmental employees. Miller's continued practice of attempting to support his appeals by reference to fancied malefactors within

the Department must be rejected as devoid of any basis in fact. We repeat, with approbation, that which was said to him in Duncan Miller, A-30364 (May 12, 1965):

> If Miller feels that the present mineral leasing laws and regulations are inadequate for the protection of the public, there are proper means whereby an interested citizen can make his views known to the responsible legislative and administrative officials. A protest of this nature is not one of those means. If, on the other hand, he believes that the existing laws and regulations have been violated, it is incumbent upon him to specify the law or regulation which he believes to have been violated and to identify the party or parties he believes to be responsible for such violation. In the absence of this information there is no basis for any action by this Department. Accordingly, the protest was properly dismissed.

Without further comment, we dismiss Miller's vituperative assertions of unlawful conduct as unsupported and without merit.

[2] Assuming, arguendo, that Miller's appeal is made in good faith, nevertheless, lacking any substance the appeal is subject to dismissal. It is the longstanding rule of the Department that a purported statement of reasons which does not point out affirmatively in what respect the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons was filed, and may be dismissed. United States v. Maus, 6 IBLA 164 (1972); United States v. Heyser, 75 I.D. 14 (1968); 43 CFR 4.412. An appellant may not shift to the Department the burden of determining whether an error has been committed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge